

DEPARTMENT OF STATE REVENUE

FIRST SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 92-0805 CSET

**CONTROLLED SUBSTANCE EXCISE TAX
FOR TAX PERIODS: 1992**

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ISSUE

Controlled Substance Excise Tax-Double Jeopardy

Authority: IC 6-7-3-5; United States Constitution Amendments 5 and 14, Bryant v. State of Indiana, 660 NE2d 290(Ind. 1995).

Taxpayer protests the assessment of Controlled Substance Excise Tax.

Statement of Facts

Taxpayer was arrested for possession of 134.3 grams of marijuana. The Indiana Department of Revenue issued a Jeopardy Finding, Jeopardy Assessment Notice and Demand for the Controlled Substance Excise Tax on August 27, 1992. Taxpayer protested the assessment of Controlled Substance Excise Tax. A hearing was scheduled and Taxpayer did not appear in person or by counsel. Taxpayer's request for a rehearing was granted. The rehearing was scheduled for September 20, 1999. Taxpayer was represented at the rehearing by counsel. More facts will be provided as necessary.

Controlled Substance Excise Tax-Double Jeopardy.

Discussion

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the delivery and possession of Marijuana in the State of Indiana. The Fifth and Fourteenth Amendments of the United States Constitution prohibit placing any citizen in jeopardy twice for the same action. Jeopardy attaches when a determination of guilt is made and a person is put at risk of punishment. Bryant v. State of Indiana, 660 NE2d 290 (Ind. 1995). In Controlled Substance Excise Tax cases, jeopardy attaches on the issuance of the Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand. Taxpayer's representative agreed that the Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand was issued prior to the jeopardy in the criminal action. Therefore, Taxpayer is liable for the tax as assessed.

Finding

Taxpayer's protest is denied.